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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,956	07/15/2003	Terrence P. Meier	13743	7793

7590 10/26/2005

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EXAMINER
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NORDMEYER, PATRICIA L

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 10/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/619,956

Applicant(s)

MEIER ET AL.

Examiner

Patricia L. Nordmeyer

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 September 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 and 18-27 is/are pending in the application.
- 4a) Of the above claim(s) 10-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 18-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/04 &amp; 7/03</u> | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Withdrawn of Finality*

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 4, 18, 19 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Van et al. (USPN 3,696,969) in view of Brown (USPN 5,203,470).

De Van et al. disclose a flange having first and second sides (Column 4, lines 1 – 3; Figure 3, #52) with a spout extending upwardly from the first side of the flange (Figure 3, #24). As seen from Figure 3, the flange and spout are integral with one another. A sealing media molded over and onto the first side of the flange, which is disposed between the first side of the flange and the sealing media (Column 4, lines 4 – 5). The material that is molded over through heat sealing, or covering the flange of the spout, is formed from a second material different from the first material with a lower density (Column 4, lines 35 – 40). However, De Van et al. fails to

Art Unit: 1772

disclose sealing media being heat activated, the first material is high density polyethylene and a thread formed on an outer surface of the spout.

Brown teaches flange and spout are formed from a single first material, high density polyethylene (Column 3, lines 40 – 41) wherein the spout has thread formed on an outer surface of the spout (Column 2, lines 50 – 52) and the spout is sealed to the flexible material through heat sealing, or covering the flange of the spout, is formed from a second material different from the first material with a lower density (Column 3, lines 40 – 52) for the purpose of forming a bag in a box type container wherein the spout is heat sealed to the bag to form a liquid impervious connection (Column 3, lines 33 – 36).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the flange and spout formed of a single material with a thread on the outer surface in DeVan et al. in order form forming a bag in a box type container wherein the spout is heat sealed to the bag to form a liquid impervious connection as taught by Brown.

4. Claims 3, 5 – 9, 20 – 23 and 25 – 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Van et al. (USPN 3,696,969) in view of Brown (USPN 5,203,470) as applied to claims 1, 2, 4, 18, 19 and 24 above, and further in view of Knox, III et al.

De Van et al., as modified with Brown, discloses a flexible package with a over-molded fitment. However, the modified De Van et al. fail to disclose the first material is an ethylene vinyl alcohol copolymer and wherein the second materials is formed from a composition including an ethylene-octene copolymer, wherein the second material further includes a maleated polyolefin, and the ethylene-octene copolymer is present in a concentration of about 75 percent by weight of the second material and the maleated polyolefin is present in a concentration of about 25 percent by weight of the second material.

Knox, III et al. teaches both a maleated polyolefin, a polyolefin mixed with an acid, and an ethylene octene copolymer, linear low density polyethylene, in a second material covering the flange of the spout (Column 2, lines 24 – 26) wherein the maleated polyolefin has a weight percent of about 18 (Column 2, lines 26 – 29) for the purpose of forming a material that is strong enough to withstand jostling without leaking the product (Column 1, lines 19 – 21).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the maleated polyolefin along with the ethylene octene copolymer in the modified De Van et al. in order to form a material that is strong enough to withstand jostling without leaking the product as taught by Know, III et al.

Brown et al. discloses the claimed invention except for the first material being an ethylene vinyl alcohol. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use ethylene vinyl alcohol as the first material, since it has been held

Art Unit: 1772

to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

With regard to claims 3 – 6, 23 and 25 – 27, since the modified De Van et al. and Knox, III et al. teach the first and second materials are a high density polyethylene and a ethylene octene, it is obvious to one of ordinary skill in the art that the first material would have a melting point temperature about 110 °F greater than a melting point temperature of the second material and the first material has a melting point temperature of about 265 °F and the second material has a melting point temperature of about 155 °F while have a density of about 0.875 g/cc.

#### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1 – 9 and 18 – 27 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Nordmeyer whose telephone number is (571) 272-1496. The examiner can normally be reached on Mon.-Thurs. from 7:00-4:30 & alternate Fridays.

Art Unit: 1772

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patricia L. Nordmeyer  
Examiner  
Art Unit 1772

*pln*  
pln

*[Signature]*  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

9/30/05